

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

PAUL L. SHEELER,

Petitioner

V.

UNITED STATES OF AMERICA,

Respondent.

No. 3:CV-07-0019

(Judge Kosik)

MEMORANDUM AND ORDER

____ NOW, this 19th day of October, 2007, it appearing to the court that:

(1) Petitioner, Paul L. Sheeler, an inmate confined at the Federal Correctional Institute at Schuylkill, filed this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241 on January 4, 2007;

(2) This matter was assigned to Magistrate Judge Malachy E. Mannion;

(3) On September 27, 2007, the Magistrate Judge filed a Report and Recommendation in which he recommended that the petition for habeas corpus be denied for failure to exhaust administrative remedies, see Moscato v. Federal Bureau of Prisons, 98 F.3d 757, 760 (3d Cir. 1996);

(4) Specifically, the Magistrate Judge found that although the Petitioner had started the administrative remedy process, he has not completed it. Petitioner himself admits that he has not exhausted his administrative remedies;

(5) Additionally, the Magistrate Judge found that even if the Petitioner had exhausted his administrative remedies, the petition should be denied on the merits. In his petition, Petitioner contends that his sentencing judge intended for jail credit to be applied to his sentence. The Magistrate Judge, however, concluded that the sentencing judge's reference to the fact that Petitioner's federal sentence will run concurrently with his state

sentence does not create an inference that the court intended to credit prior time in jail as an adjustment under United States Sentencing Guideline § 5G1.3(c);

(6) No objections were filed to the Magistrate Judge's Report and Recommendation;
AND, IT FURTHER APPEARING THAT:

(7) If no objections are filed to a magistrate judge's report and recommendation, the petitioner is not statutorily entitled to a de novo review of his claims. See 28 U.S.C. § 636(b)(1)(C); Thomas v. Arn, 474 U.S. 140, 150–53 (1985). Nonetheless, the usual practice of the district court is to give "reasoned consideration" to a magistrate judge's report prior to adopting it. See Henderson v. Carlson, 812 F.2d 874, 878 (3d Cir. 1987).

(8) Having considered the Magistrate Judge's Report, we agree with the recommendation;

ACCORDINGLY, IT IS HEREBY ORDERED THAT:

(1) The Report and Recommendation of Magistrate Judge Malachy E. Mannion dated September 27, 2007 is **ADOPTED**;

(2) The petition for writ of habeas corpus is **DENIED**; and,

(3) The Clerk of Court is directed to **CLOSE** this case and to forward a copy of this Memorandum and Order to the Magistrate Judge.

s/Edwin M. Kosik

United States District Judge